

William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
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Version #1

Attachment 5 FAS East Precinct Parking 12th Avenue Arts

GROUND LEASE AGREEMENT

BETWEEN

THE CITY OF SEATTLE
(Lessor)

and

CH DEVELOPMENT ASSOCIATION
(Lessee)

Dated _____, 2012

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GROUND LEASE AGREEMENT

This Ground Lease Agreement (this “Lease”) is dated _____, 2012 (the “Effective Date”), by and between CH DEVELOPMENT ASSOCIATION, a Washington nonprofit corporation, or its assigns (“Lessee”), and The CITY OF SEATTLE, a municipal corporation of the State of Washington (“Lessor”).

Recitals

A. Lessor is the legal owner of the real property described in Exhibit A (the “Property”).

B. Lessor and Lessee acknowledge and agree that the Property is one unit of a multi-unit condominium project, and the Lease is subject to that certain “Condominium Declaration for 12th Avenue Arts, a condominium,” dated _____, 2012 and filed with the King County Recorder under Recorder’s No. _____ (the “Declaration”), and the survey map and plans filed with the King County Recorder under Recorder’s No. _____ (collectively with the Declaration, the “Condominium Documents”).

C. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property, under the terms and conditions set forth herein.

D. As part of the consideration for the lease of the Property, Lessee (or its successors and assigns) will construct, or cause to be constructed, improvements that will be used for the parking of authorized City of Seattle vehicles (the “Improvements” and, collectively with the Property, the “Garage”).

E. Lessor (in its capacity as lessor hereunder) shall have no responsibility for, and Lessee shall pay all costs associated with, Lessee’s operation of the Garage.

F. Upon the execution of this Lease, Lessee will sublease its interests in the Property to Twelfth Avenue Arts Associates (the “QALICB”) pursuant to that certain Ground Sublease Agreement dated _____, 2012, and the QALICB will assume all obligations of Lessee hereunder, including Lessee’s obligation to construct and equip the Garage.

Agreement

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein by this reference. Certain capitalized terms used herein have the meanings set forth in Exhibit C, which is incorporated fully into the terms of this Lease.

2. Grant. Lessor leases to Lessee, and Lessee leases from Lessor, the Property, upon the terms and conditions contained in this Lease. During the term of this Lease, the Improvements and all other improvements located on the Property, including without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, shall be and remain the property of Lessee or its subtenants. At the expiration or earlier termination of this Lease, the Property, the Improvements and all other improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein (excluding any personal property of Lessee), shall become the property of Lessor, and at no cost to Lessor. Notwithstanding the foregoing, Lessee's tenancy in the Property will at all times be the subject to the Condominium Documents, including the easements set forth in Article 21 of the Declaration.

Lessee acknowledges that except as specifically provided in Section 17.1 below, (i) neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Property, and (ii) the Property is being accepted by Lessee "As-Is," in its present condition and without any representation or warranty of Lessor with respect to the condition thereof or the suitability for Lessee's intended use.

3. Use. Until such time as a certificate of occupancy is received for the Improvements, the Property shall be used solely for the purpose of constructing the foundation of the Building, the Common Elements, and the Improvements. From and after such time as a certificate of occupancy is received for the Improvements, Lessee shall use the Property and the Improvements solely for the purpose of maintaining a parking structure for authorized City of Seattle vehicles. In no event shall the residents or occupants of the Housing Unit and the Commercial Unit, or any member of the general public, be granted any rights to park in or otherwise use the Garage. Simultaneously herewith, Lessee shall grant to Lessor a license in the form of Exhibit D attached hereto, which license shall permit Lessor to use the Property for the parking of authorized City of Seattle vehicles until the commencement of construction of the Improvements. Lessee shall obtain all permits or licenses necessary for its operation. In the event that Lessee is unable, by reason of injunction or other interference, to use the Property for parking of motor vehicles, or in the event such use is or becomes prohibited by ordinance, law, regulation or order, either party shall have the right to terminate this Lease, upon giving the other party at least thirty (30) days' notice in writing.

4. Term. This Lease shall commence on _____, 2012 ("Commencement Date"), and shall expire on that date which is sixty-five (65) years from the Commencement Date, unless earlier terminated as herein provided or as otherwise provided by law. Notwithstanding the foregoing, in the event Lessee has not obtained permits, arranged financing and completed construction of the Improvements by _____, 2015, Lessor shall have the right to terminate this Lease. However, before Lessor may terminate this Lease, Lessor must first provide notice of its intent to exercise this termination right to Lessee. Lessee shall then have ninety (90) days to obtain permits, arrange financing and complete construction on the Improvements and if Lessee shall fail to do so within such 90-day period, this Lease shall terminate. Upon such termination, Lessor shall, at its option, (i) succeed to all of Lessee's interest

in all work product, permits, entitlements and designs associated with the development or potential development of the Improvements on the Property, at no cost to Lessor (in which case Lessee shall cause all such work product, permits, entitlements and designs to be assigned to Lessor), or (ii) require Lessee to restore the Property to a condition that is suitable for use by Lessor as parking lot for law enforcement vehicle (in which case Lessee shall deliver the Property in a suitable condition for such use).

5. Rent.

5.1 **Base Rent.** Lessee shall pay to Lessor, at The City of Seattle, Finance and Administrative Services, P.O. Box 94689, Suite 5200, Seattle, Washington 98124-4689, or at such other address as Lessor shall specify from time to time, rent in the amount of \$8,333.33 per month on or before the first business day of each month during the term of this Lease, commencing on the earlier of (i) _____, 2015, or (ii) the first business day of the month that immediately follows the month in which a certificate of occupancy for the Improvements is issued. The amount of monthly rent shall increase by \$416.67 on the first business day of each January, commencing in January 2016.

5.2 **Additional Payments.** Lessee shall pay, within ten (10) days of a request from Lessor therefor, all expenses incurred by Lessor in enforcing the provisions of this Lease; *provided*, to the extent an action to enforce or interpret this Lease is commenced, Section 21.7 of this Lease shall govern the recovery of reasonable costs and attorneys' fees relating to such action.

5.3 **Leasehold Excise Tax.** In addition to the monthly rental specified in Section 5.1 above, Lessee shall pay to Lessor monthly, in advance, on the first day of each calendar month, any leasehold excise tax assessed pursuant to RCW 82.29A against Lessee in respect of the monthly rent paid pursuant to Section 5.1 above. Lessee shall in addition pay to Lessor when due the leasehold excise tax in respect of any payment or obligation hereunder which is deemed to be taxable rent.

6. No Security Deposit. No security deposit shall be required as part of this Lease.

7. Improvements.

7.1 **Plans.** Lessee covenants that it will develop and construct the Improvements and Lessor consents to such development and construction of the Improvements, subject to the provisions of this Section 7. Prior to commencing construction of the Improvements, Lessee shall obtain Lessor's approval of the plans and specifications for the Improvements (the "Plans") and Lessee's budget for such construction. The Plans shall be prepared by a licensed architect ("Architect") selected by Lessee and approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Following Lessor's approval of the Plans, any subsequent material modification of the Plans shall be subject to Lessor's approval. By way of example, a "material" modification would be any modification or series of modifications that, singularly or in the aggregate, could reasonably be expected to: (i) cause any

line item in Lessee's construction budget to decrease by more than \$25,000.00, (ii) result in the use of building materials of a lesser quality or the installation of different fixtures and equipment than those in the approved Plans, (iii) result in a structural change to the Garage (*e.g.* a lower ceiling height, the relocation of fixtures) or a difference in the building systems servicing the Garage, or (iv) result in less than 111 parking stalls that are the following dimensions (all excluding stripe width):

- (a) 80 parking stalls that are 8 feet wide by 16 feet deep;
- (b) 21 parking stalls that are 11 feet wide by 19 feet deep; and
- (c) 10 parking stalls that are 8½ feet wide by 19 feet deep.

7.2 **Evidence of Funding.** In reliance on that certain Completion Guaranty made as of _____, 2012, by Capitol Hill Housing Improvement Program to and for the benefit of Lessor, Lessor has waived its requirement that Lessee provide evidence of funding for the Improvements.

7.3 **Contractor; Bond; Builder's Risk Insurance.** Lessee shall enter into a contract with Architect for the design of the Improvements, and shall enter into a contract with a general contractor to be approved by Lessor ("Contractor"), such approval not to be unreasonably withheld, conditioned or delayed, for the construction of the Improvements. Each such contract must be assignable to Lessor in the event this Lease is terminated pursuant to Section 4 hereof. Once approved, Lessee shall not replace the Architect or Contractor without Lessor's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall require its Contractor to obtain a payment and performance bond for the full amount of the construction of the Improvements, naming Lessor as a co-obligee and Lessee or the Contractor shall obtain and maintain in force at all times during which construction is in progress on the Property builder's risk insurance as required under Section 13. With respect to the Improvements, Lessor approves _____ as the Contractor and Stickney Murphy Romine as the Architect.

7.4 **Permits.** All use permits, building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with any construction shall be acquired by and at the sole cost and expense of Lessee. Lessor agrees to cooperate reasonably with Lessee as required to apply for and obtain all such permits and approvals, provided Lessor incurs no cost or expense (other than the reasonable time of Lessor's own employees) in connection therewith. Nothing in the foregoing sentence shall affect The City of Seattle, in its capacity as the governmental agency responsible for issuing any such permit, license, permission, consent or approval, from exercising its governmental powers to do so.

7.5 **Approvals; Consents in General.**

(a) All Plans submitted to Lessor for approval hereunder (including proposed modifications to the Plans requiring Lessor's approval pursuant to Section 7.1 of this Lease) shall be approved or disapproved by Lessor (in its capacity as lessor hereunder) in writing within fifteen (15) business days after submittal of such Plans (or modifications thereof). Any substitution of the Architect or Contractor shall be approved or disapproved by Lessor in writing within ten (10) business days after submittal of a request by Lessee for Lessor's approval of such substitution. Lessee shall, upon receipt of Lessor's reasonable objections, modify the Plans or designations for approval by Lessor in accordance with this Section 7.5(a). Such process of submittal, review and comment by Lessor, and resubmittal by Lessee, shall continue until such time as the Plans or designations submitted by Lessee have been approved by Lessor, or are deemed approved as provided herein. Failure by Lessor to approve or disapprove the Plans, subsequent material modification of the Plans, or a substitution of the Architect or Contractor within the time limits set forth herein shall be deemed an approval by Lessor.

(b) Lessor (in its capacity as lessor hereunder) shall not unreasonably withhold, condition or delay its approval of the Plans or any subsequent material modification of the Plans. Any objections to the Plans or subsequent material modification of the Plans must be in writing and must specify with particularity the matters to which Lessor objects. Any objections to the substitution of the Architect or Contractor must be in writing and must specify with particularity the reason for Lessor's objection.

(c) Each party shall designate one or more individuals to give consents and approvals on behalf of such party hereunder (which designation may be changed from time to time by such party upon written notice issued to the other party). The consent or approval of such designated individual shall be binding upon such party and all managers, members, partners, or other agents of such party. The initial designee of Lessee for such purposes shall be _____. The initial designee of Lessor for such purposes shall be Lessor's Director, Finance and Administrative Services.

(d) Any consent or approval that Lessor is required to or may give under this or any other provision of this Lease is for purposes of this Lease only and shall not be construed to be the consent or approval of The City of Seattle acting in its regulatory capacity.

7.6 Compliance with Plans, Laws and Permits. All construction shall be undertaken and completed in compliance with the approved Plans, all laws, codes, regulations and ordinances and all applicable permits and entitlements. Lessor shall have the right to inspect such work to confirm such compliance. Any such inspections shall be coordinated with Lessee and shall not unreasonably or materially interfere with construction activities. Such inspections shall be for Lessor's use only, and shall not constitute any approval of or assurance from Lessor with respect to such compliance.

7.7 Progress Reports. From and after the commencement of construction of the Improvements, and through the completion date thereof, Lessee shall provide to Lessor monthly progress reports consisting of, at a minimum: (a) the then current construction schedule prepared by the Contractor (including the expected completion date); (b) a summary of all

change orders approved by Lessee subsequent to the preceding monthly progress report; and (c) notice of any laborer's or materialmen's liens filed against the Property.

7.8 Plans and Specifications. Within three (3) months following the completion date for the Improvements, Lessee shall deliver to Lessor two (2) copies of complete as-built drawings.

7.9 Surrender Upon Termination. Upon expiration or earlier termination of this Lease, Lessee shall remove its personal property and shall surrender the Property, and equipment relating to mechanical and security systems (i.e., electrical, access cards) as is necessary for the proper and normal operation of the Garage for its then current and permitted use, to Lessor in its then-current condition, except for ordinary wear and tear and obsolescence that has occurred over the term of this Lease and damage by fire, casualty or condemnation which Lessee is not required to restore elsewhere hereunder. Lessee shall not remove from the Garage any appurtenant fixtures, machinery, or equipment permanently attached to or used in connection with operation of the Garage, or any additions to or replacements thereof made during the term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Lessor shall receive an operating Garage. Any personal property of Lessee not removed by Lessee at expiration or other termination of this Lease shall be considered abandoned and Lessor may dispose of such property in accordance with the law governing abandoned property then in effect at Lessee's cost. All transfers will be made without representation, recourse or warranty.

7.10 Condition of Property. Lessee assumes full responsibility for the design and construction of the Improvements, and any other improvements constructed on the Property by Lessee during the term of this Lease and Lessee hereby fully releases Lessor from any and all liability relating thereto. If in connection with the construction and development of the Improvements by Lessee, hazardous substances are discovered on the Property which must be remediated and which existed on the Property on or before the Effective Date, Lessee agrees at Lessee's cost to remediate such hazardous substances to meet the requirement of applicable laws in light of the intended use of the Property. Lessee shall give notice to Lessor promptly after learning of any hazardous substances on the Property, including, without limitation, any hazardous substances introduced onto the Property by Lessee.

7.11 Alterations. After completion of the Improvements, Lessee shall not make any Alteration, or demolish any portion of the Improvements, without first presenting to Lessor complete Plans therefor and obtaining Lessor's written consent thereto (which consent shall not unreasonably be withheld so long as, in Lessor's reasonable judgment, such Alteration will not violate this Lease or materially impair the value or utility of the Garage). Any improvements made to the Garage shall be made in a good and workmanlike manner using new materials of the same or better quality as the original improvements, and in accordance with all applicable building codes.

8. Repairs and Maintenance.

8.1 **Repairs.** Lessee shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Garage, unless such repairs and replacements arise out of or are related to the negligence or misconduct of the Lessor or its elected officials, officers, employees and agents. Lessee will permit no waste, damage, or injury to the Garage.

8.2 **Maintenance.** Lessee shall keep the Garage in good and safe condition, in compliance with all applicable laws, codes and regulations, and in good order and repair, ordinary wear and tear and damage by fire, casualty or condemnation which Lessee is not required to restore elsewhere hereunder excepted, and Lessee shall conform to and comply with the Condominium Documents and all valid ordinances, regulations and laws affecting the Garage or any improvements thereon or the use thereof. Lessor shall have the right to inspect the Garage, upon reasonable notice and subject to the rights of occupants, to confirm Lessee's compliance with this paragraph.

8.3 **No Obligation of Lessor.** Lessor (in its capacity as lessor hereunder) shall have no obligation whatsoever to keep, maintain, alter, remodel, improve, repair, decorate, replace, or paint the Improvements. It is the intention of the parties that Lessee and not Lessor shall have the full responsibility and obligation for the repair, replacement, and maintenance of the Garage, and Lessee waives, to the fullest extent allowed by law, any right or remedy against Lessor (in its capacity as lessor hereunder) based upon the condition of the Garage, any failure by Lessor (in its capacity as lessor hereunder) or Lessee to repair, replace, or maintain the Garage, or based upon any condition occurring on or omission in connection therewith.

9. **Services.** Lessee shall pay costs of any kind relating to the use, operation maintenance, repair and replacement of the Garage, including without limitation all charges for gas, electricity, light, heat, power, water, sewer, security, telephone, communications and other services uses, rendered or supplied upon or in connection with the Garage, or levied or charged against the Garage beginning on the Effective Date and continuing through the term of this Lease.

10. **Conditions, Covenants and Restrictions.** Lessee shall operate the Garage in compliance with all applicable conditions, covenants and restrictions recorded against the Property and shall pay all required assessments properly imposed.

11. **Taxes.** Lessee shall pay all taxes and assessments levied or assessed directly against the Garage, if any, including income taxes, property taxes, leasehold excise taxes and business and occupation taxes. Lessee may at its sole cost and expense, and in its own name, dispute and contest any taxes or assessments charged against the Garage. Lessor (in its capacity as lessor hereunder) agrees to reasonably cooperate with any such dispute or contest.

12. **Indemnification.** During the term of this Lease, Lessee agrees to indemnify Lessor and its elected officials, officers, employees and agents for and hold Lessor and its

elected officials, officers, employees and agents harmless from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and all limitations, restraints, penalties or obligations pertaining to Lessor or its elected officials, officers, employees or agents arising out of any act, omission, or neglect in connection with Lessee's (including Lessee's employees, agents, officers, licensees, invitees, contractors or other occupants of the Garage) construction, use or occupancy of the Garage, except where such is a result solely of the negligence or willful misconduct of Lessor or its elected officials, officers, employees or agents.

During the term of this Lease, Lessor agrees, subject to the limitations imposed by law, to indemnify and hold harmless Lessee and its partners, officers, employees and agents from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and from all limitations, restraints, penalties or obligations pertaining to Lessee or its partners, officers, employees or agents arising out of any act, omissions or neglect in connection with Lessor's (including Lessor's elected officials, employees, agents, officers, licensees, or invitees) ownership of the premises covered by this Lease, except where such is a result of the negligence or willful misconduct of Lessee or its partners, officers, agents or employees.

The respective indemnity agreements of Lessor and Lessee shall survive the termination of this Lease as to any act alleged to have occurred during the term of this Lease, and shall survive until the expiration of the applicable statute of limitations.

13. Insurance; Damage, Destruction and Condemnation. During the term hereof, Lessee shall maintain at its sole cost and expense liability insurance and property insurance, including business interruption coverage and replacement cost valuation for buildings and personal property insurance against loss and/or damage to the Garage and all equipment therein under a policy or policies including fire and extended coverage insurance covering such risks as are ordinarily insured against by like organizations engaged in like activities of comparable size and commercial general liability exposure. For purposes of this section, replacement coverage shall include an agreed upon amount endorsement with no co-insurance provision. All insurance required by this section shall be carried by insurers that Lessee reasonably determines are financially responsible and capable of fulfilling the requirements of such policies. All policies evidencing insurance shall be in the usual form and shall name Lessee as the insured party or loss payee and shall also name Lessor as an additional insured party or loss payee. Lessee shall provide to Lessor copies of certificates from an insurance agent or consultant indicating that the insurance required by this section has been obtained within 30 days after the end of each calendar year after the date hereof, and shall provide copies of the insurance policies providing such coverage to Lessor before the date hereof. Lessor (as lessor hereunder) shall not be required to hold or maintain insurance policies. Lessee shall maintain such insurance in the types and amounts sufficient to satisfy the requirements of the Condominium Documents, if applicable, and compliance with the insurance provisions of the Condominium Documents shall be deemed compliance with the insurance provisions of this Lease. Lessee shall (or shall cause any management company hired to it to operate the Garage) carry garage keeper's legal liability insurance (if applicable) insuring any and all automobiles that are parked in the Garage by Lessee's attendants or for which a bailment otherwise is created, with limits of liability not less than \$1,000,000 per occurrence.

In addition, during construction of the Improvements (or any additional improvements), Lessee shall (or shall cause its Contractor to) carry builder's risk insurance upon the entire work on the Property and/or the Improvements in the amount of one hundred percent (100%) replacement value thereof against "all risks" of physical loss or damage to the property insured, including earth movement and flood (and subject to reasonable and appropriate limits or as otherwise commercially available in the insurance marketplace). Such builder's risk insurance shall include Lessor as additional insured or loss payee.

If the Property is damaged or destroyed by casualty or taken by the power of eminent domain, Lessee shall forthwith commence, and thereafter diligently and continuously prosecute to completion, the repair of such damage and the restoration of such Improvements to their condition immediately prior to such damage, and any Insurance Proceeds or Condemnation Awards shall be available to Lessee to make such repairs and restoration. All such repairs and restoration shall be completed as promptly as possible. In the event of a total casualty loss or taking, Lessee may, in lieu of repairing or restoring the Property, pay Lessor such Insurance Proceeds and/or Condemnation Awards, and this Lease shall terminate. Lessee shall also promptly take all steps necessary to assure that the Property shall be and remain safe and the damaged Improvements not constitute a hazard or danger to persons or property from the time of the fire or other casualty.

14. Successors. All covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective permitted successors and/or assigns.

15. Labor and Material Liens. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Garage, which claims are or may be secured by mechanics' or materialmen's liens against the Garage or an interest therein, provided that the Lessee shall not be required to pay any such claims for so long as Lessee in good faith disputes the validity of such claim and diligently contests any lien filed against the Garage securing such disputed claims; provided, however, if such time period exceeds thirty (30) days, Lessor may require that Lessee provide a bond over such lien in form reasonably satisfactory to Lessor and its title insurer. If Lessee, in good faith, contests the validity of any lien, claim or demand, Lessee shall, at its sole expense, defend itself and Lessor and shall satisfy any adverse judgment before its enforcement against Lessor or the Garage. It is the intent of the parties that neither Lessee nor any of Lessee's agents, employees, representatives, contractors or subcontractors shall have any power or authority to do any act or thing or to make any contract or agreement which shall result in the creation of any mechanic's or materialmen's lien or claim upon or against Lessor or Lessor's fee simple interest in the Property.

16. Assignment, Subletting or Substitution of Lessees. Lessee agrees that it will not voluntarily sell, assign, transfer or hypothecate all or substantially all of its interest in this Lease except with the consent of Lessor. Lessor's consent shall not be unreasonably withheld but may be conditioned upon (1) reasonable evidence satisfactory to Lessor that Lessee is not then in default hereunder; (2) an opinion of counsel for the Transferee, delivered to Lessor, to the effect

that the Transferee has assumed in writing and in full all duties and obligations of Lessee under this Lease and that this Lease constitutes the legal, valid and binding obligation of the Transferee; (3) a determination by Lessor that the Transferee has the capacity to assume responsibility for the management of the Garage and the payment of any obligations secured by any interest in this Lease, and with regard to any project of the Transferee financed by Lessor, that (i) the Transferee is not now in arrears on any payments of taxes or fees due and owing to Lessor or in default under any agreement with Lessor, (ii) the Transferee does not have a documented history of noncompliance with nonmonetary provisions of agreements that are not cured after notice thereof and within the applicable cure period or grace period, and (iii) the Transferee does not have a documented history of failure to pay taxes and fees due and owing to Lessor or other public agencies that are not paid within a reasonable period after notice thereof; and (4) any other conditions which may be reasonably imposed by Lessor. Any sale, transfer or other disposition of this Lease in violation of this section shall be ineffective. The Transferee shall provide to Lessor copies of all instruments of assumption referred to in item (2) above.

Notwithstanding any permitted assignment or subletting, except as expressly provided herein, Lessee shall at all times remain directly, primarily and fully responsible and liable for all payments hereunder and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease.

Notwithstanding the foregoing, Lessee shall have the right to sublease its entire interest in the Property (but not just a portion thereof) to the QALICB, provided that Lessee provides notice and a copy of the assignment to Lessor. If the QALICB assumes all of Lessee's obligations under this Lease and remakes all representations and warranties set forth in Section 17.2 below, Lessee shall be released from its obligations under this Lease.

17. Representations and Warranties.

17.1 Representations and Warranties of Lessor. As of the date hereof, Lessor hereby represents and warrants as follows:

(a) Lessor is a municipal corporation of the State, duly organized and validly existing under and pursuant to the constitution and laws of the State, and has full power and authority under the Constitution and laws of the State to enter into the transactions contemplated on its part by this Lease, and to carry out its obligations hereunder. Lessor has duly authorized the execution and delivery of this Lease and the performance of its obligations under this Lease.

(b) This Lease is the valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

(c) Neither Lessor's execution and delivery of this Lease, Lessor's consummation of the transactions contemplated on its part hereby, nor Lessor's fulfillment of or compliance with the terms and conditions or provisions of this Lease conflicts with or results in the breach of any of the terms, conditions or provisions of any agreement, instrument, judgment,

order or decree to which Lessor is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance of any nature upon any property or assets of Lessor prohibited under the terms of any instrument or agreement.

(d) There is no litigation pending or, to the best of Lessor's knowledge, threatened against Lessor questioning Lessor's execution, delivery or performance of its obligations under this Lease, or the organization, powers or authority of Lessor, or the right of the officers of Lessor to hold their respective offices.

(e) No consent, approval, authorization or order of any governmental body is required to be obtained by Lessor for the execution, delivery or performance of its obligations under this Lease, except such as have already been obtained or will be obtained in a timely manner.

(f) Lessor has fee title to the Property, and there are no liens or encumbrances against the Property other than Permitted Encumbrances.

17.2 Representations and Warranties of Lessee. As of the date hereof, Lessee hereby represents and warrants as follows:

(a) Lessee (1) is a nonprofit corporation duly organized under the laws of the State, (2) is qualified, licensed and authorized to conduct affairs in the State; (3) has full power and authority to lease and operate the Garage, to carry on its business as now conducted and to enter into this Lease; and (4) has duly authorized the execution and delivery of this Lease by proper corporate action.

(b) This Lease is the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

(c) Neither Lessee's execution and delivery of this Lease and Lessee's consummation of the transactions contemplated hereby, nor Lessee's fulfillment of or compliance with the provisions of this Lease conflicts with, violates or will result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree to which Lessee is now a party or by which it or any of its property is bound, or constitutes a material default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, or results in the creation or imposition of any lien, charge, security interest or encumbrance of any nature whatsoever upon any of the property or assets of Lessee prohibited under the terms of any such restriction, agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree. Lessee will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

(d) There is no litigation pending or, to the best of Lessee's knowledge, threatened against Lessee affecting its ability to construct the Garage or the performance of its obligations hereunder.

(e) No consent, approval, authorization or order of any governmental body is required to be obtained by Lessee for the execution and delivery of this Lease, the fulfillment of and compliance with the provisions hereof, or the construction of the Garage, except such as have already been obtained or will be obtained in a timely manner.

18. Permitted Encumbrances. Each of Lessor and Lessee covenants and agrees that it will keep the Garage free from liens and claims of all kinds, except Permitted Encumbrances. Lessor hereby reserves the right to (and upon request from Lessee agrees that it will) enter into such reciprocal easements and other agreements as reasonably necessary to accommodate the condominium structure of the Property. Lessee agrees to join in such agreements to the extent necessary.

19. Defaults; Remedies.

19.1 Defaults. Each of the following shall constitute an Event of Default hereunder:

(a) Failure by Lessee to make any required rent or any other payment as and when due, if the failure continues for a period of 10 days after written notice from Lessor.

(b) Failure by Lessee to comply with any of the covenants or provisions of this Lease, other than those described in Section 19.1(a), if the failure continues for a period of 30 days after written notice from Lessor. If the nature of Lessee's default reasonably requires more than 30 days for its cure, Lessee will not be in default if it commences to cure within the 30-day period and thereafter diligently pursues its completion.

(c) Lessee's making any general assignment or arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have it adjudged a bankrupt or a petition for reorganization or arrangement under any bankruptcy law (unless any petition filed against Lessee is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets at the Garage or its interest in this Lease, if possession is not restored to Lessee within 60 days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets at the Garage or its interest in this Lease, if that seizure is not discharged within 60 days.

19.2 Remedies. Upon the occurrence of an Event of Default, Lessor may at any time thereafter without notice or demand do any or all of the following:

(a) Terminate this Lease by giving Lessee 30 days' written notice thereof, in which event this Lease and the leasehold estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon

the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the date originally fixed in this Lease for the expiration of the term of this Lease, and Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Property and any Improvements, reserving Lessor's right to seek damages.

(b) Upon 30 days' written notice to Lessee, terminate Lessee's right to possession of the Property and the Improvements (if any) and this Lease. Lessor may then reenter and take possession of and remove all persons or property, with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for any breaches of covenants, and Lessee shall immediately surrender possession of the Garage to Lessor. Lessor may recover from Lessee all damages incurred by Lessor resulting from the Event of Default, including but not limited to reasonable attorney's fees and costs.

(c) Maintain Lessee's right to possession, and continue this Lease in force whether or not Lessee has abandoned the Garage. Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due.

(d) Cure any such default or any portion thereof for the account of and at the expense of Lessee, either concurrently with, or at any time before or after, the exercise of any other remedy granted herein or by law.

(e) Pursue any other remedy available to Lessor under the law.

No remedy conferred upon or reserved to Lessor by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, and Lessor shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Lease, or otherwise.

Notwithstanding any other provision herein, in the event Lessor exercises its remedies pursuant to Section 19.2(a) or 19.2(b) and terminates this Lease, Lessee may, within 30 days following such termination reinstitute this Lease for the balance of the term, by paying to Lessor an amount equal to the actual damages incurred by Lessor as a result of such breach and payment of any actual costs or expenses incurred by Lessor, including reasonable attorneys' fees and disbursements, as a result of such reinstatement of this Lease.

19.3 Default by Lessor. Lessor is not in default unless it fails to perform obligations required of it within a reasonable time, and not later than 30 days after delivery of written notice by Lessee to Lessor specifying Lessor's failures to perform its obligations. If Lessor's obligation reasonably requires more than 30 days for performance or cure, Lessor is not in default if it commences performance or cure within the 30-day period and thereafter diligently pursues its completion. In the event of default by Lessor, Lessee may pursue all remedies available to it at law or in equity.

20. Covenants.

20.1 **Payment of Debt.** Lessee covenants that it will pay as they become due all obligations secured by Lessee's interest in the Garage.

20.2 **Compliance with Laws.** Lessee covenants to maintain its existence as an entity duly qualified to do business in the State. With respect to the Garage and any additions, alterations and improvements thereto, Lessee covenants and agrees to comply at all times with all applicable requirements of federal and State laws, including those related to environmental matters (subject to the provisions of this Lease), and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that Lessee shall be deemed in compliance with this section so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

21. General Provisions.

21.1 **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction will not affect the validity of any other provision.

21.2 **Time of Essence.** Time is of the essence of this Lease.

21.3 **Notices.** Any notice required or allowed by this Lease shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth below:

If to the Lessor: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
Attn. Director, Finance and Administrative Services

If to Lessee: CH Development Association
c/o Capitol Hill Housing Improvement Program
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attn. Executive Director

21.4 **Waiver.** Waiver by Lessor of the breach of any provision of this Lease is not a waiver of any subsequent breach by Lessee of the same or any other provision. Lessor's

consent to or approval of any act does not make Lessor's consent to or approval of any subsequent act unnecessary. Acceptance of rent by Lessor is not a waiver of any preceding breach of any provision of this Lease other than Lessee's failure to pay the rent so accepted.

21.5 Covenants and Conditions. Each provision of this Lease performable by Lessor or Lessee is both a covenant and a condition.

21.6 Authority. Each individual executing this Lease on behalf of the respective entities represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity, and that this Lease is binding upon that entity in accordance with its terms.

21.7 Attorneys' Fees. In any action to enforce or interpret this Lease the prevailing party is entitled to recover reasonable costs and attorneys' fees from the losing party.

21.8 Quiet Possession. Upon paying the rent and observing and performing all of its covenants and conditions, Lessee shall have quiet possession of the Garage for the entire term subject to all of the provisions of this Lease.

21.9 Relationship of Parties. Nothing herein shall be construed so as to create a partnership, joint venture, or agency relationship between the parties.

21.10 Intention of the Parties. It is the intention of the parties hereto that pursuant to the terms of this Lease, the full burdens and benefits associated with the Garage, except those pertaining to ownership for state law purposes, shall pass to Lessee during the term of this Lease.

21.11 Consent. Consent or approval of parties whenever required under this Lease shall not be unreasonably withheld or delayed, unless otherwise specifically provided by the terms of this Lease.

21.12 Governing Law and Venue. The validity of this Lease, the interpretation of the rights and duties of the parties hereunder and the construction of the terms hereof shall be governed in accordance with the internal laws of the State. Venue in the event of any dispute shall be King County, Washington.

21.13 Memorandum of Ground Lease Agreement. The parties hereto agree to the recording of a Memorandum of Ground Lease Agreement in the form of Exhibit B hereto upon satisfaction of the conditions set forth in Section 5.

21.14 Estoppel Certificates. Each party hereto shall, upon 10 days' prior written request, provide an estoppel certificate addressing such matters as the requesting party may reasonably request.

22. Put Right. Lessor hereby grants to Lessee an option to require Lessor to purchase Lessee's entire leasehold interest in the Property (the "Interest") at the time commencing on

January 1, 2020, for one thousand dollars (\$1,000.00) (the “Put”). Lessee shall exercise the Put by providing Lessor written notice of its intent to exercise the Put (the “Put Notice”). Once the Put Notice has been provided to Lessor, the transfer of Interest shall occur pursuant to Section 23.4 of this Lease.

23. Purchase Option.

23.1 Purchase Option Granted. Lessee hereby grants to Lessor an option (the “Option”) to purchase the Interest at the time commencing on January 1, 2020. The purchase price for the Interest pursuant to the Option (the “Option Price”) shall be one hundred percent (100%) of the fair market value of the Interest, less a six percent (6%) credit because the sale will occur without payment of real estate broker or agent fees. Upon Lessee’s receipt of Lessor’s written notice of its intent to exercise the Option (the “Exercise Notice”), Lessor and Lessee each shall exercise its best efforts in good faith to agree on the Option Price for the Interest. If the parties fail to agree to the Option Price, then the Option Price shall be determined by appraisal in accordance with the provisions of Section 23.2 below.

23.2 Appraisal Process. In any instance in which the fair market value of the Interest is required to be determined by appraisal, the provisions of this paragraph shall apply. Any such appraisal shall be conducted by one or more Independent Appraisers (as defined below), to be selected within thirty (30) days following the delivery of an Exercise Notice. If the parties are unable to agree upon an Independent Appraiser within such thirty (30) day period, Lessor and Lessee each shall select an Independent Appraiser. If the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two (2) appraisals. If the difference between the two (2) appraisals is greater than ten percent (10%) of the lower of the two (2) appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two (2) appraisers are unable jointly to select a third appraiser, either Lessor or Lessee may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Seattle, Washington for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of Independent Appraisers submitted by the Lessor and Lessee. Each list of names of Independent Appraisers shall be submitted within ten (10) written days after the date on which the appraisal proceeding is invoked, or will be disregarded and the appraiser shall be selected from the list provided. The appraisals shall take into account the use restrictions and any other restriction recorded as of record against the Property. Lessor and Lessee shall pay the cost of any appraiser(s) selected by it pursuant to this paragraph. If the parties agree on the selection of an Independent Appraiser then the costs of such appraiser shall be paid by the parties on an equal basis. Likewise, if the parties are required to use a third appraiser, then the costs of such third appraiser shall be split between Lessee and Lessor.

23.3 “Independent Appraiser” Defined. For purposes of this Lease, the term “Independent Appraiser” means a firm that is generally qualified to render opinions as to the fair market value of assets such as the Interest, which satisfies the following criteria:

- (a) Such firm is not an affiliate of Lessor or Lessee;
- (b) Such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;
- (c) Such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm;
- (d) One or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and
- (e) Such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

23.4 Contract and Closing. Upon determination of the Option Price, or upon Lessor's receipt of the Put Notice, Lessor and Lessee shall enter into a written contract for the purchase and sale or assignment of the Interest in accordance with the terms of this Lease, providing for a closing not sooner than sixty (60) days, nor later than one hundred twenty (120) days, after the Put Notice is received or the Option Price is determined, as applicable. In the absence of any such contract, this Lease shall be specifically enforceable upon the exercise of the Put or the Option, as applicable. Upon closing, Lessee shall deliver to Lessor, together with the deed to or assignment of the Interest, an ALTA Owner's Policy dated as of the close of escrow in the amount of the Put Price or the Option Price, as applicable, subject to the liens, encumbrances and other exceptions then affecting the title. Lessee shall be responsible for all closing costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Each party shall pay its own legal fees in connection with the exercise of the Put or Option.

24. Amendments. The provisions hereof shall not be amended, revised or terminated prior to the expiration of the stated term hereof except by an instrument in writing duly executed by Lessor and Lessee (or its successors in title). If appropriate, the parties shall record an amendment to the Memorandum of Ground Lease Agreement incorporating the changes to this Lease effected by the amendment.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Lease the date set forth above.

LESSOR:

THE CITY OF SEATTLE

By: _____
Title:

LESSEE:

CH DEVELOPMENT ASSOCIATION, a Washington
nonprofit corporation

By: _____
Title:

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of CH Development Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

EXHIBIT A
REAL PROPERTY DESCRIPTION

The Property is described as follows:

[Garage Unit of _____...]

[The definition of the Property will exclude ownership rights under the declaration (*i.e.*, the City will retain voting rights, *etc.*).]

[The Property shall include rights of ingress and egress onto the Property by motor vehicles and pedestrians.]

EXHIBIT B
MEMORANDUM OF GROUND LEASE AGREEMENT

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

Seattle City Attorney's Office
Attn. Jenifer C. Merkel
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769

MEMORANDUM OF GROUND LEASE AGREEMENT

Lessor:	The City of Seattle
Lessee:	CH Development Association
Legal Description:	Official legal description on Exhibit A
Assessor's Tax Parcel ID#:	
Reference # (If applicable):	Additional number on pg. N/A

MEMORANDUM OF GROUND LEASE AGREEMENT

THE CITY OF SEATTLE AND CH DEVELOPMENT ASSOCIATION

This Memorandum of Ground Lease Agreement is dated _____, 2012, by and between The City of Seattle, a municipal corporation of the State of Washington (“Lessor”), and CH Development Association, a Washington nonprofit corporation (“Lessee”).

1. Lease Agreement. Pursuant to a Lease Agreement dated _____, 2012, Lessor has leased to Lessee and Lessee has leased from Lessor the property located in King County, Washington, and described on Exhibit A hereto (hereinafter referred to as the “Property”).

2. Term. The term of the Lease commenced on _____, 2012, and ends on _____, 2077.

3. Covenants. The Lease contains various representations, covenants and agreements of Lessee regarding the use of the Property.

4. Purpose of Memorandum. This memorandum is prepared for the purpose of recordation to give notice of the Lease. This memorandum shall not constitute an amendment or modification of the Lease, and in the event of any conflict between the terms of this memorandum and the Lease, the terms of the Lease shall control.

LESSOR: THE CITY OF SEATTLE

By: _____
Title:

LESSEE: CH DEVELOPMENT ASSOCIATION, a Washington
nonprofit corporation

By: _____
Title:

William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of CH Development Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

**EXHIBIT A
TO
MEMORANDUM OF GROUND LEASE AGREEMENT
REAL PROPERTY DESCRIPTION**

The Property is described as follows:

EXHIBIT C DEFINITIONS

“Alteration” means any alteration, improvement or addition to the Garage which costs greater than \$100,000 in each instance.

“Building” has the meaning ascribed to such term in the Declaration.

“Commercial Unit” has the meaning ascribed to such term in the Declaration.

“Common Elements” has the meaning ascribed to such term in the Declaration.

“Condemnation Award” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the Property or the Improvements, if any, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in obtaining such award.

“Effective Date” means the date of this Lease set forth in the introductory paragraph above.

“Housing Unit” has the meaning ascribed to such term in the Declaration.

“Insurance Proceeds” means the total proceeds of casualty insurance actually paid or payable in respect of insurance on all or any part of the Property or the Improvements, if any, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in collecting such proceeds.

“Lease” means this Ground Lease Agreement, which is dated _____, 2012, between Lessor and Lessee.

“Permitted Encumbrances” means, as of any particular time, the following liens and encumbrances against the Property: _____; and all other liens and encumbrances in favor of or approved in writing by Lessor. *[to be updated upon receipt of title report]*

“State” means the State of Washington.

“Transferee” means any person to whom Lessee sells, transfers to or disposes of its interest in the Garage or any portion thereof.

William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

EXHIBIT D
FORM OF LICENSE